@))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 167 of 2003
with
CIVIL APPLICATION No 2431 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KASTURBHAI BHAVAJI

Versus

PATEL NATWARBHAI PRAHALADBHAI

Appearance:

1. Civil Revision Application No. 167 of 2003 with
Civil Application No. 2431 of 2003
MR MITESH R AMIN for Petitioner No. 1
MR MB GANDHI for Respondent No. 1
MS RUMI M GANDHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/01/2004

ORAL JUDGEMENT

Rule. Mr.Gandhi waives service of rule. With the consent of the parties, the matter is taken up for

final hearing today.

2) By filing this Civil Revision Application, the petitioner has challenged the order passed by the learned Judge, Court No.6, City Civil Court, Ahmedabad, below Civil Misc.Application No.35/2002, by which the learned Judge rejected the said application submitted by the petitioner purported to be under Order 37 Rule 4 of C.P.C. The respondent-herein instituted a suit, being Summary Civil Suit No.4404/2000, in the City Civil Court at Ahmedabad. In the said suit, the defendant did not appear and an ex-parte decree was passed on 18-1-2001, by which the suit of the plaintiff was decreed. The defendant, thereafter, preferred the aforesaid application, purported to be under Order 37 Rule 4, for setting aside the ex-parte decree on the ground that for some genuine reasons, he could not appear in the said proceedings. The trial Court, after considering the facts and circumstances of the case, came to the conclusion that, though the defendant was duly served, he did not appear and accordingly the said application was rejected. Against the aforesaid order of the trial Court, rejecting the application of the petitioner, for setting aside the ex-parte decree, the petitioner-original defendant has filed this Civil Revision Application under Section 115 of the Civil Procedure Code.

3) At the time of hearing of this revision application, it is argued by the learned advocate for the petitioner that the petitioner was not aware about the pendency of the suit and that the summons of the suit was accepted by his son. Learned advocate for the petitioner has also submitted that, in the interest of justice, the petitioner may be given last opportunity to defend the case. Learned advocate for the petitioner has further submitted that the petitioner is willing to deposit 50% of the decretal amount in the Trial Court within a reasonable period. He submitted that the petitioner has no objection if the respondent is permitted to withdraw the said amount by furnishing appropriate security.

4) Mr.Gandhi, on the other hand, submitted that the petitioner was thoroughly negligent in defending the suit. He submitted that, in any case, the respondent should be awarded heavy cost and the petitioner may be directed to deposit entire decretal amount.

5) I have heard both the learned advocates, in detail. It is, no doubt, true that the petitioner was not vigilant in defending the suit before the trial

Court. However, in order to see that he may be allowed to defend the suit and considering the fact that the petitioner is willing to deposit 50% of the decretal amount, in my view, it would be just and proper to allow the petitioner-original defendant to defend the said suit on condition that he should deposit 50% of the decretal amount within a period of two months from today. The ex-parte decree passed against the petitioner-original defendant is accordingly set aside on condition that the petitioner shall deposit 50% of the decretal amount within a period of two months from today. Thereafter, the original defendant is permitted to appear in the said suit and file his written statement. After depositing the amount, the original defendant shall file written statement latest by 30th April, 2004. Thereafter, the trial Court may decide the matter in accordance with law as expeditiously as possible and preferably within a period of one year from filing of such written statement.

6) On original defendant depositing 50% of the decretal amount, the original plaintiff is at liberty to withdraw the said amount after furnishing appropriate security to the satisfaction of the trial Court. The said withdrawal shall be subject to the final outcome of the suit and will be subject to adjustment as per the final decree in the suit.

7) Accordingly, the impugned order of the trial court is quashed and set aside and the ex-parte decree passed in Civil Misc.Application No.35/2002 is quashed and set aside. If the petitioner-original defendant fails to deposit the aforesaid amount as stipulated in this order, the decree passed by the trial Court shall remain as it is. However, if the defendant deposits the amount within the stipulated time, the suit shall be proceeded further on its merits.

8) Since the original plaintiff is required to defend this Civil Revision Application by engaging an advocate for no fault on his part, the petitioner-original defendant is directed to pay the cost of Rs.5,000/-. Such cost should be deposited in the trial Court within a period of two months from today and the original plaintiff is allowed to withdraw the said amount unconditionally.

9) This revision is accordingly allowed. Rule is made absolute partly with no order as to costs.

10) In view of this order in Civil Revision Application, no order on Civil Application.

(P.B.Majmudar,J.)

/malek